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FISCAL IMPACT REPORT

		LAST UPDATED	2/16/25
SPONSOR	Small	**ORIGINAL DATE**	2/12/25
SHORT TITLE	Tax on Property Owned by NM RETA	**BILL NUMBER**	House Bill 295
		ANALYST	Graeser

REVENUE*
(dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Property tax	$0	$0	See fiscal implications			Recurring	General Obligation Bonds
	$0	$0	See fiscal implications			Recurring	Counties, Municipalities, School Districts, Hospital Districts, Special Districts

Parentheses ( ) indicate revenue decreases.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
County Assessors	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	

Parentheses ( ) indicate expenditure decreases.

Conflicts with Senate Bill 112
Relates to House Bill 46

Sources of Information

LFC Files

<u>Agency Analysis was Received From</u>
New Mexico Attorney General (NMAG)
State Land Office (SLO)
Taxation and Revenue Department (TRD)

<u>Agency Analysis was Solicited but Not Received From</u>
Department of Finance/Local Government Division (DFA/LGD)
Energy, Minerals and Natural Resources Department (EMNRD)
New Mexico Counties (NMC)

SUMMARY

Synopsis of House Bill 295

House Bill 295 (HB295) confirms that real property, including transmission lines, owned by the Renewable Energy Transmission Authority (RETA) – an instrumentality of the state – is property tax exempt pursuant to Section 7-36-4 NMSA 1978, even though the transmission line and ancillary equipment are or will be constructed and operated by non-exempt entities, including Pattern Energy.

If enacted, HB295 would exempt from the property tax fractional interests in real property held by nonexempt entities, including leasehold interests, if the property is owned by an exempt entity. Improvements on the property would remain taxable if owned by the nonexempt entity, except in cases where the nonexempt entity is an electrical transmission line or interconnected storage facility acquired by RETA under the RETA Act, in which case the exemption would still apply.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or June 20, 2025, if enacted. The provisions of the bill are applicable to the 2026 property tax year.

FISCAL IMPLICATIONS

There are no general fund impacts of the provisions of this bill.

New Mexico State Land Office (SLO), notes that this is a continuing issue involving some of the state land beneficiaries:

> While the bill does not have a direct fiscal impact on the SLO, the lack of clarity regarding the application of the fractional interest statute creates business uncertainty that may negatively impact earnings from state trust lands. This uncertainty has been driven recently by some county assessors taking a more aggressive approach in their interpretation and application of Section 7-36-4 (B) (1) NMSA 1978.
>
> State trust lands were granted to the state from the federal government for the purpose of generating revenue for public institutions, primarily for educational purposes. This framework relies on the leasing of state land, including state-owned improvements to those lands in certain circumstances, to various public and private entities. The SLO does not believe it is constitutionally permissible to tax state-owned property (including state-owned improvements) under Article VII, Section 3, of the state constitution, because the earnings from leases of state trust lands directly benefit the public. Money earned by the SLO is money that taxpayers do not need to come up with to support public schools, universities and hospitals throughout the state. See, e.g., *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ¶ 32, 401 P.3d 751.
>
> Imposing a tax on a lessee's leasehold interest in state-owned improvements necessarily affects the lessee's *pro forma* calculation, and thus the amount they are willing and able to pay in rent. See, e.g., *Cutter Flying Service, Inc. v. Property Tax Department*, 1977-NMCA-105: "We think there can be little doubt that, should these valuations be allowed

> to stand, it would have an adverse effect on the rents and fees that the City could charge in the future. And thus, ultimately, the city would bear a large part of the economic burden of the tax." *United States v. Detroit*, 355 U.S. 466, 472 (1958): "It is undoubtedly true, as the Government points out, that it will not be able to secure as high rentals if lessees are taxed for using its property."
>
> If assessors are allowed to tax state-owned improvements, that will directly lead to reduced income to state land trust beneficiaries, presumptively in the amount of the taxes levied. Of more concern would be prospective lessees that decline to bid on state trust lands because the tax levy renders their business plan infeasible.
>
> Improvements owned by private parties that are situated on leased state trust lands are, and should remain, subject to property taxation.

SIGNIFICANT ISSUES

The New Mexico Attorney General (NMAG) provides a simplified description of the actions of this bill:

> The statute addresses the taxability of fractional interests in improvements made on land owned by the New Mexico Renewable Energy Transmission Authority (RETA) when the fractional interest in the improvement is held by a nonexempt entity.
>
> Under § 7-36-4(1)(B), when a nonexempt entity owns a fractional interest in the real property of an exempt entity, the fractional interest is exempt from property taxation, EXCEPT FOR: (1) improvements that are owned or leased by a nonexempt entity. Fractional interests in such improvements owned or leased by a nonexempt entity are subject to property taxes.
>
> HB295 proposes to add language to § 7-36-4(1)(B)(1) to identify one situation where a nonexempt factional ownership in an improvement to land owned by RETA is exempt from property taxation.
>
> Under the proposed language in § 7-36-4(1)(B)(a) and (b), fractional interests in improvements consisting of "electric transmission and interconnected storage facilities and all related structures" owned by RETA and that qualify as eligible facilities under the RETA Act; AND that are leased by RETA to a nonexempt entity to assist RETA in constructing or operating the facility, are exempt from property taxation.
>
> In short, the proposed amendment exempts from property taxation those fractional interests held by nonexempt entities in electric transmission and storage facilities, when the facility has been acquired by RETA and leased to the nonexempt entity to assist in constructing or operating the facility.

The first fully RETA-sponsored transmission project, the SunZia line, is currently under construction by Pattern Energy and is expected to be operational by July 2025. Beyond the SunZia project, RETA is involved in acquisition, co-development, and lease-back agreements for several additional transmission projects, including the RioSol AC line, which will parallel SunZia; the Mora Line, a smaller transmission line in the northeast corner of the state; the Crossroads-Hobbs-Roadrunner project, a transmission line similar in scale to the Western Spirit

project in southeastern New Mexico; and the North Path project, a large DC transmission line crossing the northern third of the state. Additional projects are anticipated to be announced in the future.

Under existing law, fractional interests in real property, including leasehold interests, held by nonexempt, profit-generating entities and owned by exempt entities are generally exempt from property taxation. However, this exemption remains legally contested, as the absence of a constitutional amendment explicitly authorizing such exemptions has led to ongoing controversy. Additionally, if a nonexempt entity owns the improvements on the property, the leasehold interest is subject to taxation. The proposed amendments would extend property tax exemptions to leasehold interests held by nonexempt entities, such as Pattern Energy, for transmission lines and related infrastructure. Under the bill, improvements constructed by a nonexempt entity on land owned by an exempt entity and leased for the operation of a transmission line and its ancillary structures and equipment would be exempt from property taxation. This provision would remove the tax liability that would otherwise apply due to private ownership of the improvements.

With current understanding and agreements between various contractors/developers and the sponsoring counties, both the transmission lines and the wind farms completed or under construction are covered by public benefit agreements or payments in lieu of taxes (PILT). Currently, there are five counties in New Mexico that have property subject to the provisions of this bill within their jurisdictions. (Curry, Guadalupe, Lincoln, San Miguel and Torrance Counties). There is a small chance that if the bill does not pass, the nonexempt developer may have to pay both a property tax and the previously negotiated PILTs.

SLO continues analysis of the finer legal points:

> The Commissioner of Public Lands manages approximately 9 million acres of land for the trust beneficiaries. State trust lands were provided to the state with the sole purpose of generating revenue for public schools and other state institutions, such as hospitals and universities, throughout the state. Any taxation that has the effect of diminishing income from state trust land is categorically prohibited by Section 10 of the Enabling Act. In *Lassen v. Arizona*, 385 U.S. 458, 468 (1967), The U.S. Supreme Court held that "the grants cannot be too carefully safeguarded for the purpose for which they are appropriated [and] the purposes of Congress require that the Act's designated Beneficiaries derive the full benefit of the grant." (internal punctuation omitted).
>
> The decision by one county assessor to pursue a novel interpretation of Section 7-36-4 to apply to leasehold interests in improvements on state trust land has created confusion around the issue in a way that potentially runs afoul of the Enabling Act and the New Mexico constitution. The confusion is related to the text of Section 7-36-4 that imposes taxation not just on improvements *owned* by lessees of state trust land, but also on improvements *owned by the state* and only leased to the private lessee.
>
> It would presumptively be unconstitutional to value and tax property owned by an exempt entity. See, N.M. Const. Art. VIII, Sec. 3. The potential for assessors to tax any interest in state trust land acts as a tax on that land itself. Amending the bill as suggested below would confirm that all interests in state trust land and state-owned improvements are exempt from taxation. Lessee- owned improvements would continue to be subject to taxation.

> While there is some ambiguity as to how leaseholds are treated under New Mexico law, the most recent, and most definitive, statement is found in *Resolution Trust Corporation v. Binford*, 1992- NMSC-068, holding that "New Mexico courts have always held that leaseholds are personal property; yet we have also noted that a leasehold is an interest in land." The *Binford* court characterized leaseholds as "hybrid" because they are personal property but are conveyed as real property: "The hybrid nature of leaseholds necessitates that they be conveyable in the same manner as real estate, notwithstanding the fact that a leasehold is personal property." Moreover, under State Land Office rule 19.2.9.18.A NMAC, the "interest of a lessee in a business lease and in the improvements is a personal property interest." Therefore, a fractional interest is personal property, subject to exemption by the Legislature.

SLO has a simple fix noted in "Alternatives."

Despite SLO's contention that a leasehold is personal property and not realty, TRD is concerned about the underlying constitutionality of Section 7-36-4 NMSA 1978 real property exemptions:

> This bill proposal may be unconstitutional because the constitution does not exempt property leased from an exempt entity from property taxes. The New Mexico Supreme Court explained that "the rationale for exemption depends upon an implicit quid pro quo between the State and an exempt organization. Property which is exempt from taxation does not share in the burden of paying for the cost of government. Therefore, in exchange for its exempt status, the use of such property must confer a substitute substantial benefit on the public. A substantial public benefit is a benefit of real worth and importance to an indefinite class of persons who are a part of the public." *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, 32, 401 P.3d 751 (cleaned up).
>
> In this bill proposal, there is no support for the proposition that the nonexempt entity that constructs, operates or assists in constructing or operating the transmission and storage facilities confers a substantial public benefit that should exempt the nonexempt entity from its burden of paying for the cost of government. Tax & Rev concludes that this proposal may be unconstitutional.

ADMINISTRATIVE IMPLICATIONS

Currently there are at least five counties with renewable energy and electricity transmission projects within their jurisdictions. The provisions of this bill may require coordination between assessor and treasurer and county commissions in each of the affected counties.

Taxation and Revenue's Property Tax Division's (PTD), State Assessed Bureau, would need to be notified of any projects for tracking purposes. For projects that meet this qualification, the State Assessed Bureau would issue a notice of value with zero tax due. If the project is no longer owned by the NM RETA, PTD would assess and send out a notice of value.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with Senate Bill 112, which amends 7-36-4 NMSA 1978 to provide a real property tax exemption for a nonexempt entity which provides student housing to a college or

university in the state.

This bill relates to House Bill 46, which imposes a property tax on real property constructed with Hospital Equipment Loan Act funds.

OTHER SUBSTANTIVE ISSUES

In assessing all tax legislation, LFC staff considers whether the proposal is aligned with committee-adopted tax policy principles. Those five principles:

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate.

In this case, however, the issue is largely technical and these technical issues trump tax policy considerations.

ALTERNATIVES

SLO suggests an alternative:

> The goal of SB112, HB295, and the State Land Office concerns expressed herein could all be realized in a simpler and no less effective manner by making the following revision to Section 7- 36-4(B)(1):
>
> > … improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; provided that improvements, including a leasehold interest in the improvements, are exempt if the improvements are owned by a governmental entity;
>
> This proposed change avoids the specter of assessors attempting to tax interests in state-owned land. It would address the issue of potential taxation of UNM-owned dorms leased to private parties, taxation of RETA-owned transmission line infrastructure leased to private parties, and taxation of State Land Office-owned improvements leased to private parties.
>
> To our knowledge, these are the only three types of state-owned improvements leased to private parties as to which there is a taxation issue.

LG/rl/SL2/sgs